

## REMARKS

Applicants acknowledge the discrepancy in numbering and have adopted the numbers set forth by the Examiner. Thus, Claims 24-49 are pending but claims 36 to 49 are herewith canceled, without prejudice or disclaimer, as not being directed to elected subject matter. Applicants herewith reserve the right to file one or more divisional applications on the non-elected subject matter. With the entry of this amendment, claims 24-35 will be active in this case.

### **I. Substitute Specification**

The Examiner requests applicants to amend the specification to provide an updated statement of the lineage of this application and to insert sequence identification numbers, where such identifiers are missing. Applicants previously filed a Preliminary Amendment (December 4, 2001) in which the specification was amended to add SEQ ID Nos. The Substitute Specification incorporates such previous amendments. Attorney for applicants asserts that no new matter is added with the amendments to the substitute specification.

### **II. Rejections under 35 USC § 112, second paragraph**

The Examiner alleges that claims 24-35 are indefinite on account of the recitation of "immunologically active" with reference to peptides. He suggests that the term be deleted in favor of "immunogenic." Applicants traverse this rejection as the meaning of "immunologically active" is clearly set forth in the original specification at page 11, first paragraph. Specifically, applicants define immunologically active as meaning that the "peptides react with antibodies against HIV virus which can be present in the blood of patients or blood donors." Applicants further explain that "customarily, immunologically active peptides contain at least one epitope which gives rise to the

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formation of antibodies." Because U.S. law permits an applicant to be his own lexicographer and applicants herewith do provide a specific definition, applicants do not believe that the term immunologically active is indefinite and respectfully request withdrawal of the rejection of the claims in view of this term.

The Examiner also objects to the recitation of "HIV-type" in claim 26. In response, applicants have eliminated the objected to language. Withdrawal of this rejection is respectfully requested.

The Examiner also notes that the sequence in claim 33 is incorrect. In response, applicants have corrected the transposed amino acid residues. Applicants respectfully assert that this rejection is rendered moot with this amendment.

### **III. Rejections under 35 USC § 102**

The Examiner rejects claims 24-27 and 29-34 under 35 USC § 102(e) over both U.S. Patent No. 5,770,427 ("Guertler 1998a") and U.S. Patent No. 5,840,480 ("Guertler 1998b"). According to the Examiner, both references disclose HIV1 peptides obtained from isolate MPV-5180/91. Applicants respectfully traverse this rejection as it may apply to the amended claims. Although Guertler (1998a) and Guertler (1998b) disclosed the deduced amino acid sequence for MPV-5180/91, neither reference discloses or suggests the specific fragments recited in the present claims. In the absence of such disclosure, the Examiner's rejection should be withdrawn.

### **IV. Double-patenting rejections**

The Examiner has provisionally rejected claims 24-34 under 35 USC § 101 over claims 1-12 over U.S. Application No. 2002123039A1 and over claims 1-12 of US2001009667A1. In response, applicants point out that U.S. Application No. 2002123039A1 is the current application, USSN 10/000,321 and that U.S. Application No. US2001009667A1 is now U.S. Patent No. 6,335,158, a copy of which is attached. The claims in the '158 patent, which are directed to a method of detecting a nucleic acid molecule, differ from those in the present case. The provisional rejections under § 101 should therefore be withdrawn.

The Examiner also rejects claims 24-35 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 5,830,634 ("the 634 patent"). In response, applicants herewith file a terminal disclaimer so as to disclaim any term that would extend beyond the patent term for the '634 patent. In view of this terminal disclaimer, applicants respectfully request the examiner to withdraw this rejection.

**Conclusion**

In view of the above amendments, comments and terminal disclaimer, applicants assert that claims 24-35 overcome all rejections and are in condition for allowance. Early notification thereof is therefore respectfully requested.

Respectfully submitted,

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